

Finding of No Significant Impact

Designation of Critical Habitat for the Pecos *assiminea*

The U.S. Fish and Wildlife Service is designating critical habitat for the Pecos *assiminea* (*Assiminea pecos*) pursuant to section 4 of the Endangered Species Act of 1973, as amended (Act). We are designating approximately 397 acres of critical habitat in Texas on lands owned by The Nature Conservancy. The designation includes one complex at Diamond Y Spring, associated springs, and a segment of their drainages, and East Sandia Spring. Critical habitat units are designated in portions of Pecos and Reeves Counties, Texas. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

A general description of land ownership in both areas follows:

1. Diamond Y Springs Complex, Pecos County, Texas. This area comprises a major population of Pecos *assiminea*. The designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow, and portion of Leon Creek are also designated as these areas are considered habitat for the Pecos *assiminea*. This designation is approximately 153.8 ha (380 ac) of aquatic and neighboring mesic habitat. This complex occurs entirely on private lands. Private land in the immediate vicinity of the Diamond Y Springs Complex is managed as a nature preserve by TNC.

2. East Sandia Spring, Reeves County, Texas. This spring contains a population of Pecos *assiminea*. The designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos *assiminea*. This designation is approximately 6.7 ha (16.5 ac) of aquatic and neighboring upland habitat. The site is private land managed as a nature preserve by TNC.

Bitter Lake National Wildlife Refuge (BLNWR) in New Mexico is not designated as critical habitat because we use the provisions outlined in section 3(5)(A) of the Act to evaluate those specific areas essential to the conservation of the species that may require special management considerations or protections. On the basis of our evaluation, we have determined that BLNWR does not require special management considerations or protections, and have excluded this area from the designation of critical habitat for these four invertebrates pursuant to section 3(5)(A) of the Act.

The BLNWR was established on October 8, 1937, by Executive Order 7724 "as a

refuge and breeding ground for migratory birds and other wildlife." The Refuge Recreation Act (16 U.S.C. 460-1) identifies the refuge as being "suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species." The Wilderness Act of 1964 (P.L. 88-577) directs the Service to "maintain wilderness as a naturally functioning ecosystem" on portions of the Refuge. While the BLNWR was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the BLNWR is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The BLNWR sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine habitats. The BLNWR has a federally reserved water right that essentially protects groundwater levels of the Roswell Basin in the Refuge vicinity. The Refuge has undergone adjudication of its federally reserved water rights by the State of New Mexico (order signed May 1997). The BLNWR is currently in negotiations with the New Mexico Interstate Stream Commission, a State agency responsible for administering New Mexico's water resources, to quantify these reserved rights (Service 2005).

The National Wildlife Refuge System Improvement Act of 1997 establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principals into the management of the Refuges. According to Section 7(e)(1)(E) of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation including hunting, fishing, wildlife observation, wildlife photography, environmental education and environmental interpretation are the priority public uses of the refuge system, and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the refuge system and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose.

The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly. In other words, a CCP must be followed once it is approved, and regularly updated in response to environmental changes or new scientific information.

The BLNWR has a Final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions over the next 5 to 10 years and sets forth strategies for achieving Refuge goals and objectives within that timeframe. Key goals of the CCP related to these four invertebrates include the following: (1) To restore, enhance and protect the natural diversity on the BLNWR including threatened and endangered species by (a) appropriate management of habitat and wildlife resources on refuge lands and (b) by strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners, and (2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the BLNWR by: (a) restoration of the river channel, as well as restoration of threatened, endangered, and special concern species; and (b) control of exotic species and manage trust responsibilities for maintenance of plant and animal communities and to satisfy traditional recreational demands. Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (aquatic species in these categories include the four invertebrates), and (2) the monitoring of wildlife populations, including endemic snails.

As explained in detail above, we believe that BLNWR lands are already managed for the conservation of wildlife and special management considerations or protections are not required. Therefore, we are not designating critical habitat for the four invertebrate species within BLNWR.

On November 22, 1985, we received a petition from Mr. Harold F. Olson, Director of the NMDGF, to add 11 species of New Mexican mollusks to the Federal list of endangered and threatened wildlife. Roswell springsnail (*Pyrgulopsis roswellensis*, formerly *Fontelicella roswellensis* (Hershler 1994)), Koster's springsnail (*Juturnia kosteri*, formerly *Durangonella kosteri* and *Tryonia kosteri*) (Hershler et al. 2002)), and Pecos assiminea were among the 11 species. We determined the petition presented substantial information that the requested action may be warranted and published a positive 90-day petition finding in the Federal Register on August 20, 1986 (51 FR 29671). A subsequent 12-month finding published in the Federal Register on July 1, 1987 (52 FR 24485) concluded that the petitioned action was warranted but precluded by other higher priority listing actions.

On August 29, 2001, the Service announced a settlement agreement in response to litigation by the Center for Biological Diversity, the Southern Appalachian Biodiversity Project, and the California Native Plant Society. Terms of the agreement required that we submit to the Federal Register, on or by February 6, 2002, a 12-month finding and accompanying proposed listing rule and proposed critical habitat designation for the four invertebrates addressed in this proposed rule. This agreement was entered by the court on October 2, 2001 (Center for Biological Diversity, et al. v. Norton, Civ. No. 01-2063 (JR) (D.D.C.)). A proposed rule to list the four invertebrates as endangered with critical habitat

was published in the Federal Register on February 12, 2002 (67 FR 6459). On May 31, 2002, we reopened the public comment period for 90 days (67 FR 6459). In addition, we published newspaper notices inviting public comment and announcing the public hearing in the following newspapers in New Mexico: the Carlsbad, Current-Argus, the Artesia Daily Press, the Roswell Daily Record, and the Albuquerque Journal. On June 18, 2002, we held a public hearing in Carlsbad, New Mexico, to solicit comments on the proposed rule.

On May 4, 2005, we announced the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the four invertebrates (70 FR 23083). Section 4(b)(2) of the Act requires that we consider economic impacts, impacts to national security, and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Implementation of our decision, as described in the environmental assessment as Alternative II is expected to result in: (1) little substantive change to section 7 consultations for federally supported projects; (2) no reduction in the degree of habitat protection on the BLNWR for the four invertebrate species; (3) no difference in the non-regulatory and educational benefits because these are already being realized on the BLNWR; and (4) land use in and surrounding the proposed critical habitat units is not expected to change compared to the No Action alternative (i.e., listing of the four invertebrate species as endangered without critical habitat). Finally, the potential impacts are not likely to result in substantial cumulative effects, when added to the effects of existing section 7 consultations for other species and existing land management plans and policies.

The Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in New Mexico and Texas. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. In the final rule we categorize and respond to all applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, changes were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

Section 4(b) of the Act states "The Secretary shall make determinations [of critical habitat] ... solely on the basis of the best scientific data available . . ." We considered the best scientific information available to us at this time, as required by the Act. This designation is based upon our most current understanding of the biology and requirements of the Pecos assassin bug. Based upon newly available information, coordination with land managers and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which will be reflected in the final rule. We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species.

One of the purposes of an environmental assessment is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9). An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment that analyzes the effects of the designation. On May 4, 2005, we announced the availability in the Federal Register of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the four invertebrates (70 FR 23083). Section 4(b)(2) of the Act requires that we consider economic impacts, impacts to national security, and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the Pecos assiminea does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27).

Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27(a)). The context of both short- and long-term effects of proposed designation of critical habitat includes the local areas that encompass critical habitat units. The effects of proposed critical habitat designation, although long-term, would be small.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27(b)). The intensity of potential impacts that may result from proposed designation of critical habitat for Pecos assiminea is low.

The potential impacts may be both beneficial and adverse, but minor.

There would be no effects to public health or safety from proposed designation of critical habitat, and the proposed action would not affect unique characteristics of the geographic area.


Potential impacts from critical habitat designation on the quality of the environment are unlikely to be highly controversial and do not involve any uncertain, unique, or unknown risks.

Proposed designation of critical habitat for Pecos assiminea does not set a precedent for future actions with significant effects and would not result in significant cumulative impacts.

Significant cultural, historical, or scientific resources are not likely be affected by proposed designation of critical habitat.

Proposed critical habitat designation would not violate any federal, state, or local laws or requirements imposed for the protection of the environment.

As such, an environmental impact statement is not required.


Regional Director, Region 2
U.S. Fish and Wildlife Service

Aug. 1, 2005
Date

UNITED STATES FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the action designating critical habitat for the Pecos assassin bug :

Check One:

- ☐ is a Categorical Exclusion (CatEx) as provided by 516 DM 2, Appendix 1, and/or 516 DM 6, Appendix 1 (*reference which CatEx was used for this determination*). No further NEPA documentation will therefore be made.
- ☒ is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.
- ☐ is found to have significant effects and, therefore, further consideration of this action will require a Notice of Intent to be published in the Federal register announcing the decision to prepare an Environmental Impact Statement (EIS).
- ☐ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.
- ☐ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Supporting Documents (list):

- Final Environmental Assessment
- Final Economic Analysis
- Federal Register Notice
- Comments received during public comment period

Signature Approval

Susan Jacobson
(1) Originator

August 1, 05
Date

(2) Project Leader

Date

(3) Division Chief

Date

John M. [Signature]
(4) Regional Environmental Coordinator

August 1, 05
Date

J. E. Nicholas
(5) Assistant Regional Director

Aug 1, 2005
Date

Henry A. Bell
(6) Regional Director

Aug 1, 2005
Date